

DOCUMENT RESUME

03621 - [A2633745]

[Alleged Nonresponsive Bid from Competitor]. B-189520. September 16, 1977. 3 pp.

Decision re: Mark A. Carroll & Son, Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Charles Construction Co.; Veterans

Administration: VA Hospital, Manchester, NH.

Authority: 52 Comp. Gen. 955. 45 Comp. Gen. 177. F.P.R. 1-2.405.

The protester alleged that the low bidder's bid was nonresponsive since it failed to indicate compliance with the requirement that the contractor's forces perform at least 15% of the actual construction work. The bid was responsive despite the fact that the bidder placed a zero in the space for "services," since the bidder was bound to comply with the invitation-for-bids provisions which it acknowledged by signing the bid. (Author/SC)

HARRIS
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-189520

DATE: September 16, 1977

MATTER OF: Mark A. Carroll & Son, Inc.

DIGEST:

Bid on construction contract requiring contractor to furnish actual construction work of not less than 15 percent of contract price is responsive despite fact that bidder placed a zero (0) in space for "services" since bidder is bound to comply with IFB provisions which it acknowledged by signing bid.

Mark A. Carroll & Son, Inc. (Carroll), protests the June 30, 1977, award of a construction contract to Charles Construction Co. (Charles) under invitation for bids (IFB) 608-16-77, issued by the Veterans Administration (VA) Hospital, Manchester, New Hampshire. Charles was the low bidder at \$19,900 and Carroll was the second lowest at \$24,227. Carroll contends that Charles' bid is nonresponsive because it failed to indicate compliance with the requirement that the contractor's forces perform at least 15 percent of the actual construction work.

The IFB contains five clauses which affect the amount of work which the general contractor must perform; they stated:

"3. WORK TO BE EXECUTED BY CONTRACTOR'S FORCES

"A. Contractor shall execute on site, with his forces (exclusive of executive, supervisory and clerical forces), actual contract construction work equivalent to not less than 15 percent of the contract award price.

- "B. Construction work shall consist of contract work accomplished on the site by laborers, mechanics, and foremen on Contractor's payroll and under his direct supervision. Cost of material and equipment installed by such labor may be included in the above per cent of work required to be performed by the Contractor.
- "C. Contractor shall submit, simultaneously with schedule of costs required by Payments to Contractor provision of the General Conditions of these specifications, a statement designating branch or branches of contract work he will perform with his forces. Approved schedule of costs will be used in determining value of a branch or branches, or portions thereof, of the work for the purposes of this clause.
- "D. If, during progress of work hereunder, Contractor requests a change in branch or branches of the work to be performed by his forces and Contracting Officer determines it to be in the best interests of Government, Contracting Officer may, at his discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the Contractor with his forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.
- "E. In the event Contractor fails or refuses to meet the requirement of Paragraph A of this clause, it is expressly agreed that the contract price will be reduced by 15 per cent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this provision, it is agreed that 15 percent is an acceptable estimate of Contractor's overhead and profit, or mark-up, on that portion of the work which he fails or refuses to perform, with his own forces, in accordance with Paragraph A of this clause."

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The IFB bid form, which called for only two categories of price, was filled in by Charles with the following dollar amounts.

Materials to be incorporated into the	
construction for this bid item	\$19,900
Services and other obligations for	
this bid item.	0
Total for this bid item.	\$19,900

Carroll contends that the placement of a zero (0) in the space for "services and other obligations * * *" renders Charles' bid nonresponsive because it indicates that Charles will not perform any actual construction work which would constitute a material violation of clause 3A. By contrast, Carroll's bid of \$24,277 was divided between \$11,000 for materials and \$13,277 for services.

In response, VA maintains that the placement of a zero was a minor informality which could be waived under Federal Procurement Regulations (FPR) § 1-2.405 (1964 ed.).

However, we believe that by signing the bid form Charles indicated its intention to be bound by all of the terms of the IFB. While the placement of a zero in the space for services appears to be unusual for a construction contract of this kind, it was not prejudicial to other bidders because it did not afford Charles any potential for a competitive advantage. This is not a situation where the low bidder gains an unfair opportunity for "bid shopping" since Charles is bound both to the 15-percent work force requirement and to its bid price. See 45 Comp. Gen. 177 (1965). It is well settled that the Government's acceptance of such a bid effectively binds the bidder to perform in accordance with the IFB's advertised terms and specifications. Cf. 52 Comp. Gen. 955, 956 (1973).

Accordingly, the protest is denied.


Acting Comptroller General
of the United States